The Examiner has restricted the invention under 35 U.S.C. §121 into the following groups:

I. Claims 1-21 and 34-37, drawn to an implantable graft, classified in 623/1.26.

II. Claims 22-33, drawn to a method for weaving a graft, classified in 128/898.

Applicants provisionally elect to prosecute Group I, claims 1-21 and 34-37, with traverse.

The Examiner has stated that the inventions are distinct, each from the other because inventions I and II are related, as product and process of making. The Examiner, however, does not specifically allege why the species are patentably distinct.

Applicants' acknowledge that under MPEP, §806.05(h) that inventions are distinct if the following can be shown:

(1) that the process as claimed can be used to make another and materially different product, or

(2) the product as claimed can be made by another and materially different process.

The Examiner has not, however, specifically alleged why the inventions are distinct. According to MPEP 803, the restriction is proper only if the claims are able to support separate patents and they are either independent or distinct (806.05-806.05(h)). Section 803 also states that even if distinct or independent claims exist, examination on the merits is required providing the search can be made without serious burden.

In the instant case, it is apparent from a thorough reading of the specification and the claims that the graft and method of Groups I and II are one invention in this application. References which disclose the method of Group II would clearly be cited as prior art against those which disclose the system of Group I. The Examiner would certainly feel obligated to consider such disclosure relevant and would not hesitate to cite references relating to one group against the other under 35 U.S.C. §103. For those reasons, Applicants maintain that a co-extensive field of search seems virtually mandated and would not present an undue burden.

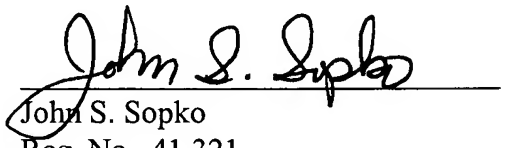
Furthermore, the mere fact that of separate classifications is not determinative of a proper restriction. Separate classification is mere a patent office convenience for the purpose of locating pertinent art. It is clear, therefore, that although diversity of classification may be the considered factor in a decision to make a restriction requirement, it should not be a controlling one. The Examiner may not properly rely on separate classifications to support an allegation of separate status in the art. The Examiner has also not made any further allegations as to why this restriction is proper.

For the reasons set forth above, Applicants respectfully request that the requirement for restriction to be withdrawn and consideration of all the claims on the merits be commenced.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Should the Examiner have any questions, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number set forth below.

Respectfully submitted,



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